

FILED

FEB 27 2008

RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Victor Hernandez K-31659
P.V.S.P. Fac D-3-128-L
P.O. Box 8504
2 Coalinga Ca 93210

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4 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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IN re Victor Hernandez

JF
CV 08

1154
(PR)

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MEMORANDUM OF POINTS AND AUTHORITIES

APPEAL FROM THE HONORABLE PAUL BERNAL JUDGE OF THE SANTA CLARA
SUPERIOR COURT.

STATEMENT OF THE CASE

Petitioner requests this Court please take Judicial Notice of the fact that the petitioner is requesting appointment of legal counsel because he is unable to read or write at a level to fully understand these proceedings. Petitioners exhibit A is a copy of his most recent tabe results which show his reading score is 3.6 and language score of 2.9.

On 5-10-06 petitioner sent a request to the inmate records office after a conversation with another inmate regarding time earning credits. The petitioner was sent a copy of a flyer that had been posted in the law library advising inmates of People v. Stofle 1996 45 Cal App 4th 417 advising inmates of zero credit ability.

No additional effort was made to contact inmates who could not

1 read or write and petitioner was never notified of any change in
2 the law.

3 THE SUPERIOR COURT BASED ITS OPINION ON THE FACT
4 PETITIONER HAD PREVIOUSLY FILED A PETITION FOR RELIEF.

5 The Superior Court reasoned that the petitioner had filed a
6 petition for relief in March of 2004 and did not mention his claim
7 now presented. The petitioner urges that he never filed the habeas
8 petition and that it was somehow placed in the record. In addition
9 it is not his hand writing nor did he authorize it.

10 The petitioner urges that his alleged 2004 habeas petition
11 is of no interest to the matter before the court because there
12 was no response to his formal request to the department of Correct-
13 ions until 5-12-06. Petitioner could not have raised this claim
14 because he was unaware of the change in the law.

15 The petitioner has asked this court to appoint counsel to
16 represent him because it appears that someone is taking great
17 advantage of the fact that he cannot read and write at a level to
18 present his claims to the court. While petitioner has had some
19 help in presenting this matter to the court because of need for
20 a complete investigation he is requesting counsel be appointed. He
21 has provided his most recent tabe scores to confirm that he is
22 unable to understand the complex proceedings before the court.
23 I Victor Hernandez declare under the penalty of perjury that the
24 information I have provided is true and correct.

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26 Filed this day of 2008

27 X Victor Hernandez X
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